



## **Summary of SB 357**

### **Proposed Amendments to Michigan Business Corporation Act Chapter 7A**

#### **The Purpose of the Proposed Amendment to Chapter 7A**

- Chapter 7A of the Michigan Business Corporation Act (MCL 450.1775...450.1784) was intended to protect shareholders of Michigan Corporations from hostile takeovers via unsolicited tender offers or accumulation of shares in the open market — a traditional hostile takeover attempt.
- However, it was written too broadly. It unintentionally penalizes corporations who invite friendly shareholders to buy large amounts of stock from the corporation (rather than in the open market). Such friendly shareholders often buy such large amounts of stock from the company in order to provide a source of capital to the company.
- The statute's wording has the unintended consequence of covering such Michigan corporations where friendly shareholders take large positions by buying stock from the corporation (rather than in the open market). Those corporations have to obtain approval of super-majorities of shareholders to pursue normal growth strategies (i.e., via mergers, acquisitions, etc.)
- As a result, Michigan corporations with friendly shareholders holding such large positions may find it difficult or impossible to move forward with normal growth strategies (i.e., via mergers, acquisitions, etc.). This has the perverse effect of allowing rogue minority shareholders to block transactions designed to benefit all shareholders.
- The proposed amendments to Chapter 7A would allow such corporations to proceed with beneficial growth-oriented transactions in a normal fashion, while maintaining the hostile takeover protections the statute was intended to provide.
- Without an amendment to the current law, there may be missed opportunities to attract capital and investment in Michigan corporations. In addition, companies incorporated in Michigan may choose to reincorporate in other jurisdictions with less restrictive business combination statutes.

## **About Flagstar**

- Flagstar Bancorp, Inc. ("Flagstar") is a Michigan corporation that wholly-owns Flagstar Bank, FSB ("Flagstar Bank").
- Flagstar Bank is the largest financial institution headquartered in Michigan, with \$14.1 billion in total assets and over 3,000 employees in Michigan.
- Flagstar is 64% owned by a single shareholder, MP Thrift Investments L.P. ("MP Thrift"), a company organized under MatlinPatterson Global Advisors LLC. MP Thrift received regulatory approval to own its majority stake in Flagstar and since January 2009 has invested approximately \$1 billion of capital into Flagstar. MP Thrift acquired all of its shares of Flagstar from the company, not on the open market.

## **Chapter 7A**

- Chapter 7A was originally adopted in 1984 as a means to protect Michigan shareholders from hostile takeovers via unsolicited tender offers or accumulation of shares in the open market.
- The statute applies to an "interested shareholder", which is defined as a shareholder that acquires 10% or more of the voting shares (with several exceptions). It requires any "business combination" (which is broadly defined) to be approved by both (i) the holders of 90% of all shares entitled to vote, and (ii) two-thirds of the shares entitled to vote which are not held by the "interested shareholder."
- As noted, the statute is so broadly written that its definition of "interested shareholder" has the unintended consequence of covering Michigan corporations where friendly shareholders take large positions by buying stock from the corporation (rather than in the open market). In that situation, rogue minority shareholders can block transactions that may benefit all shareholders, with only a merger with a company multiple times larger not requiring the Chapter 7A super-majority vote. Normal, desirable growth-focused transactions can be blocked in this manner.
- Flagstar provides a clear example of the unintended effects of this statute. Given MP Thrift's ownership in Flagstar and assuming a percentage of the shares entitled do not cast their vote, even a very small minority (possibly 5% to 10%) could block the vote for a "business combination" supported by the board and a large majority of the shareholders.
- Reputable sources have indicated that there will be significant industry consolidation over the next several years, and Michigan-based companies such as Flagstar should not be prevented from participating in that consolidation, either as an acquirer or acquire, solely based on the unintended consequences of Chapter 7A.



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**Michael C. Flynn**  
**Executive Vice President**  
**General Counsel**

Michael C. Flynn joined Flagstar in March 2013 as general counsel with responsibility for all legal operations.

He has spent more than 20 years in legal and financial leadership roles, with a focus on mortgage originations and servicing, major litigation and regulatory matters, and federal refinance programs.

Most recently he served as general counsel for PNC Mortgage, the mortgage division of PNC Bank, N.A. Prior to that he was general deputy general counsel and then acting general counsel for the U.S. Department of Housing and Urban Development (HUD), serving simultaneously as counselor to the board of directors of HUD's Hope for Homeowners program.

He also served as senior vice president and senior counsel for World Savings Bank, where he managed attorneys in the company's mortgage lending business.

Earlier in his career, he was vice president and general litigation counsel for Chicago Title Insurance Company, with responsibility for the company's corporate- and major-claims litigation. He also was in private practice, focusing on commercial litigation.

He is a fellow of the American College of Consumer Financial Services Lawyers and the American College of Mortgage Attorneys. He has served as chair of the American Bar Association (ABA) business law section task force on litigation reform and rules changes, and as a member of the ABA business law section task force on federal preemption of state laws. He also has served as co-chair of the ABA business law section subcommittee on in-house litigation management and chair of the ABA TIPS section title insurance litigation committee, as vice-chair of the ABA TIPS section insurance coverage litigation committee, and as a member of the American Land Title Association claims committee.



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**Mary M. Fowlie, J.D.**  
**Senior Vice President**  
**Chief Compliance Officer**

Mary is a Senior Vice President and Chief Compliance Officer at Flagstar Bank in Troy, Michigan.

She is a graduate of the University of Michigan and Michigan State University Law School. She has over 30 years of experience as a Mortgage Banking Attorney and Bank Compliance Officer at Standard Federal Bank, LaSalle Bank and Talmer Bank prior to Flagstar. She previously served as Legal Counsel at the Michigan Legislative Service Bureau. She is also past Chairman of the Michigan Bankers Association.

Flagstar has approximately \$14 billion in assets and is the largest independent regional bank headquartered in Michigan with 111 branch offices throughout the State. It originates mortgage loans nationwide and is a top ten overall national residential mortgage originator and servicer.